

STATUS: Effective

POLICY NUMBER: MP-005-R1-NPD

SUBJECT: Compliance and Enforcement Response Policy

AUTHORIZED: Thomas W. Easterly, Commissioner

SUPERSEDES:

ISSUING OFFICES: Office of Air Quality, Office of Land Quality, Office of Water Quality, Office of Pollution, Prevention and Technical Assistance

ORIGINALLY EFFECTIVE: October 2, 2009

RENEWED/REVISED:

Disclaimer: This nonrule policy document (NPD) is intended solely as guidance and does not have the effect of law or represent formal Indiana Department of Environmental Management (IDEM) decisions or final actions. This NPD shall be used in conjunction with applicable laws. It does not replace applicable laws, and, if it conflicts with these laws, the laws shall control. This NPD may be put into effect by IDEM 30 days after presentation to the appropriate state environmental board. Under [IC 13-14-1-11.5](#), this policy will be available for public inspection for at least 45 days prior to presentation to the appropriate board. If the nonrule policy is presented to more than one state environmental board, it will be effective 30 days after presentation to the last. IDEM will submit the policy to the Indiana Register for publication. Revisions to the policy will follow the same procedure of presentation to the state environmental board and publication.

1.0 PURPOSE

The purpose of the IDEM Compliance and Enforcement Response Policy (CERP) is to set forth IDEM's clear and consistent policy on the appropriate and timely identification and enforcement of violations by regulated entities subject to Indiana's environmental requirements.

2.0 SCOPE

This policy applies to all agency staff involved in the identification and evaluation of violations by entities subject to Indiana's environmental requirements as well as staff involved in the conduct of enforcement actions. This policy shall apply from the date of discovery of the violation (whether discovery is through an inspection, record review or any other compliance determination method) through the conclusion of any administrative enforcement action. This policy does not apply to violations lead by U.S. Environmental Protection Agency (U.S. EPA), referred directly to the Office of the Attorney General (ATG) or those investigated by or referred to the Office of Criminal Investigations (OCI).

This policy sets forth factors that shall guide IDEM in the exercise of its compliance and enforcement actions. IDEM reserves the right to take appropriate enforcement action on any regulated entity as deemed necessary specific to that case.

3.0 SUMMARY

The CERP sets forth IDEM's systematic approach to the identification of violations by entities subject to Indiana's environmental requirements as well as the conduct of enforcement actions. The CERP focuses on both the appropriateness and timeliness of IDEM's compliance and enforcement activities.

The CERP articulates the appropriateness of particular enforcement responses when one or more violations are identified. In addition, the CERP sets forth specific time frames for the notification of a regulated entity of violations and appropriate administrative enforcement of such violations by the Office of Air Quality (OAQ), Office of Land Quality (OLQ), and the Office of Water Quality (OWQ).

4.0 DEFINITIONS

4.1 "Agency enforcement response" – An IDEM action including, but not limited to, the following: issuance of a Violation Letter or Notice of Violation, adoption of an Agreed Order, and issuance of a Commissioner's Order.

4.2 "Agency" – IDEM.

4.3 "Agency staff" – Any employee or representative of IDEM including regular employees, temporary employees,

part-time employees, intermittent employees, contractors, and interns.

4.4 "Agreed order" – A legally binding agreement between IDEM and a party in violation of environmental rules or statutes that contains provisions requiring that party to come into compliance with the rules or statutes.

4.5 "Assistant commissioner" – An assistant commissioner in IDEM.

4.6 "Branch chief" – A secondary management level position in IDEM.

4.7 "Case manager" – Agency staff assigned by the program area to a particular enforcement case.

4.8 "Commissioner's order" – An administrative proceeding under [IC 13-30-3-10](#) for violations of an Indiana environmental requirement.

4.9 "Complaint" – For purposes of this NPD is a concern filed by any entity (citizen, public official, etc.) alleging polluting activities.

4.10 "Compliance cases" – Allegations of noncompliance at a regulated entity referred to the appropriate program area compliance branch supervisory staff for consideration of enforcement action.

4.11 "Compliance manager" – Includes branch chiefs and section chiefs within the OAQ, OLQ, and OWQ, and the deputy directors within the regional offices.

4.12 "Compliance and Enforcement Program" – The areas of IDEM tasked with determining and documenting whether a regulated entity is complying with Indiana's environmental requirements and enforcing those requirements.

4.13 "Compliance review" – The use of techniques other than inspections to evaluate a regulated entity's compliance with Indiana's environmental requirements or other applicable pollution control limit. These techniques include, but are not limited to the review of self-reporting or records supplied by the regulated entity, analysis of information, data or samples, off-site observations or surveillance, and review of maps, photos, video, digital images, or other information.

4.14 "Compliance staff" – Agency staff assigned to conduct regulatory compliance reviews, on-site inspections, or investigations, on behalf of the agency.

4.15 "Compliance and Technical Assistance Program (CTAP)" – A program within the Office of Pollution Prevention and Technical Assistance providing confidential compliance and technical assistance to communities and businesses.

4.16 "Enforcement action" – The issuance of either a Violation Letter or Notice of Violation (NOV) issued by an IDEM program area, or a referral to the Attorney General or U.S. EPA for a violation.

4.17 "Enforcement staff" – Agency staff located in the Office of Air, Land Quality, or Water Quality assigned to manage any particular enforcement case.

4.18 "Findings" – The outcome of a compliance inspection, investigation, or compliance review.

4.19 "Enforcement process" – A review of noncompliance, determination of appropriate enforcement measures and implementation of those measures.

4.20 "Indiana environmental requirement" – Includes, but is not limited to, any (1) requirement prescribed by Title 13 of the Indiana Code; (2) rule adopted by the Air Pollution Control Board, Solid Waste Management Board, Water Pollution Control Board, and/or the Financial Assurance Board; (3) term or condition within a permit, license, registration or certification; or (4) requirement contained within a judicial order or final administrative order.

4.21 "Inspection" – An on-site evaluation of a regulated entity's compliance with an Indiana environmental requirement.

4.22 "Inspection notification" – A written summary of the oral report provided to a regulated entity at the

conclusion of an inspection pursuant to [IC 13-14-5-3](#).

4.23 "Multi-media" – An environmental compliance determination of violations from at least two different environmental program areas, such as air and land, for example, open burning and open dumping.

4.24 "Notice of violation" – Notification to a regulated entity of an administrative proceeding under [IC 13-30-3-3](#) for violations of an Indiana environmental requirement.

4.25 "Office of Pollution Prevention and Technical Assistance" – An office within IDEM.

4.26 "Program area" – These include, but are not limited to, the following departments, OAQ, OLQ and OWQ.

4.27 "Referral" – Correspondence requesting the initiation of an enforcement process within IDEM or to U.S. EPA, or to the Office of the Indiana Attorney General regarding a violation of an Indiana environmental requirement for an appropriate enforcement response.

4.28 "Regional office" – An agency office other than the agency's offices located at Indiana Government Center Complex and/or on Shadeland Avenue in Indianapolis.

4.29 "Regional office deputy director" – A first level agency supervisor within one of the regional offices in IDEM.

4.30 "Regional office director" – A regional office director in IDEM.

4.31 "Regional office staff" – Agency staff located in one of the three regional offices assigned to conduct regulatory compliance reviews, on-site inspections, and investigations.

4.32 "Regulated entity" – Any entity subject to one or more IDEM administered statutes and rules.

4.33 "Response" – A reply from the regulated entity to a violation letter describing the compliance actions taken to correct a violation.

4.34 "Section chief" – A first level agency supervisor in the OAQ, OLQ, and OWQ.

4.35 "State agency" – As used in this document, state agency means a state office, officer, department, division, bureau, board, commission, or any other state body or agency.

4.36 "Violation" – Any noncompliance with Indiana's environmental requirements.

4.37 "Violation letter" – Correspondence from the compliance or enforcement staff to a regulated entity regarding a violation of an Indiana environmental requirement or other applicable pollution control limits. This correspondence may require a response from the regulated entity that describes what action will be taken to achieve and maintain compliance.

5.0 ROLES

This policy shall be implemented by the agency's compliance and enforcement program area staff and shall be enforced by the appropriate compliance supervisors. The commissioner, assistant commissioners, and compliance branch chiefs possess the discretion to authorize compliance or enforcement staff to deviate from the terms of this policy on a case-by-case basis.

5.1. The compliance staff shall:

5.1.1. Identify violations through compliance reviews, on-site inspections, and investigations on behalf of IDEM;

5.1.2. Identify the appropriate class of violation consistent with this policy;

5.1.3. Take appropriate enforcement action within the designated time frame; and

5.1.4 Route the inspection summary/violation letter or referral to the appropriate section chief or deputy director within the designated time frame.

5.2. The compliance and enforcement program section chiefs supervising compliance staff shall:

5.2.1. Ensure appropriate class of violation is consistent with this policy;

5.2.2. Monitor and ensure deadlines are met;

- 5.2.3. Sign all inspection summary/violations letters or referrals and send within designated time frames; and
 - 5.2.4. Sign off on all referrals and route to appropriate branch chief.
- 5.3. The compliance and enforcement program branch chiefs shall:
- 5.3.1. Review referrals;
 - 5.3.2. Identify any sensitive issues;
 - 5.3.3. Appropriately coordinate with regional office directors or deputy directors;
 - 5.3.4. Ensure appropriate class of violation is consistent with this policy;
 - 5.3.5. Monitor and ensure deadlines are met;
 - 5.3.6. Sign off on all referrals for enforcement and route to their program assistant commissioner before being distributed to staff assigned to distribute enforcement referrals to case managers;
 - 5.3.7. Be the point of contact for each program area; and
 - 5.3.8. Identify revisions to this policy.
- 5.4. The compliance and enforcement managers assigned to distribute referrals to case managers shall:
- 5.4.1. Review referrals;
 - 5.4.2. Identify any sensitive issues;
 - 5.4.3. Sign off on all referrals;
 - 5.4.4. Assign to appropriate case manager;
 - 5.4.5. Monitor and ensure deadlines are met in accordance with employee performance plans; and
 - 5.4.6. Coordinate with the compliance and enforcement staff per this policy.
- 5.5. The enforcement case manager shall:
- 5.5.1. Evaluate documentation to ensure referral supports enforcement action;
 - 5.5.2. Prepare all documents and manage all assigned cases to ensure deadlines are met;
 - 5.5.3. Enter required enforcement information into the METS database; and
 - 5.5.4. Coordinate with the compliance staff per this policy.
- 5.6. The assistant commissioners shall:
- 5.6.1. Distribute this policy and accompanying standard operating procedures to all compliance and enforcement staff;
 - 5.6.2. Review all referrals to enforcement staff to ensure violations are managed in accordance with the provisions of this policy;
 - 5.6.3. Ensure any program-specific policies are consistent with this policy;
 - 5.6.4. Coordinate with the other assistant commissioners, compliance and enforcement managers and regional office directors, as necessary;
 - 5.6.5. Establish a process to evaluate compliance cases to assure case-specific circumstances justify the level of enforcement proposed;
 - 5.6.6. Review all proposed denials of voluntary self disclosures to ensure self-disclosures are managed appropriately;
 - 5.6.7. Notify the commissioner of a program referral of a state facility;
 - 5.6.8. As directed by the commissioner, hold discussions with counterparts at appropriate state agencies concerning compliance problems to ensure that the appropriate state agency takes actions to return to compliance;
 - 5.6.9. Determine, after discussion with appropriate state agency staff, whether to refer a case regarding state agency compliance to appropriate compliance and enforcement staff;
 - 5.6.10. Forward, when appropriate, referral packet of a state facility to the assistant commissioner of the Office of Legal Counsel for appropriate enforcement action.
 - 5.6.11. Review proposed Agreed Orders and Commissioners Orders to ensure cases are managed in accordance with the provisions of this policy; and
 - 5.6.12. Sign Agreed Orders.

6.0 POLICY

6.1. Violations of Indiana's Environmental Requirements shall be fully documented in writing by compliance staff consistent with the standard operating procedures for their appropriate program. Should a violation be encountered that is not included in program specific operating procedures, the compliance program, in consultation with the appropriate program assistant commissioner, shall make a determination of the approach to handle the violation. IDEM reserves the right to take the appropriate enforcement action on any regulated entity as deemed necessary specific to that case.

6.2. Classes of Violations:

Violations have been divided into three classes. In all three classes, violations will be referred to enforcement staff when approved by the applicable program assistant commissioner. It is expected that enforcement staff will make determinations that are consistent and fair across all media.

6.2.1. General categories:

A. Class 1 Violations:

1. Violations which are immediately reviewed by the appropriate program assistant commissioner for referral to enforcement staff include any of the following:

- a. Unauthorized preventable (negligent) discharge, failure to provide treatment, release or emission that results in a threat to human health or safety or which results in a serious impact to the environment;
- b. Person performing a regulated activity without the proper permit, license or certification that results in a significant threat to human health or the environment;
- c. A determination of significant noncompliance (SNC) or high priority violation (HPV), under the water, air or hazardous waste programs;
- d. Documented falsification of data, documents or reports;
- e. Failure to respond to a violation letter where a response is required;
- f. Denial of access to an agency staff person to a regulated site; and
- g. Other preventable violations not specifically identified above which result in threat to human health or safety or which results in serious impact to the environment.

B. Class 2 Violations:

1. Violations referred to enforcement staff, if not adequately addressed by the regulated entity after a violation letter/ request for information letter is sent and the violation was not corrected or the response not deemed appropriate by the respective program assistant commissioner include any of the following:

- a. Unauthorized discharge, failure to provide treatment, release or emission, or threat of release or emission, that results in minor or potential risk to human health or no serious harm to the environment;
- b. Person performing a regulated activity without the proper permit, license or certification that does not result in a significant threat to human health or the environment;
- c. Person performing a regulated activity with the proper permit, license or certification, but not following all required practices, with the exception of asbestos work practice requirements; and
- d. Late, incomplete or improperly completed data, documents, reports or compliance monitoring and assurance activities.

C. Class 3 Violations:

1. Chronic or recurring minor violations may be referred to enforcement staff after repeated documentation of the violation or efforts to achieve compliance fail, and the violation continues; including any of the following:

- a. Violations not otherwise covered by Class I or II, which are minor in nature and are documented in inspection reports or similar reports. These are often corrected at the time of the inspection, but recur after having been corrected. If there are recurring violations, a referral to enforcement staff may occur after a violation letter is sent; and
- b. Violations that meet the criteria set forth in [IC 13-30-7](#) as "minor violations".

6.3. Disclosures:

6.3.1. Mandatory disclosures submitted to IDEM by regulated entities:

A. Appropriateness:

1. Regulated entities that are required to disclose violations, for example, quarterly deviation reports, discharge monitoring reports, annual compliance certifications, shall be treated in the same manner as if the violation was discovered by IDEM.

6.3.2. Voluntary self-disclosures submitted to IDEM by regulated entities:

A. Appropriateness:

1. The self disclosure manager shall evaluate any self disclosure within the parameters of IDEM's Self-Disclosure and Environmental Audit Policy and any related standard operating procedures.

B. Approval:

1. The self disclosure manager shall approve or disapprove any self-disclosure. All proposed disapprovals shall be reviewed by the OLC assistant commissioner and applicable program assistant commissioner for appropriateness.

6.4. Compliance and Enforcement:

Program areas shall take an appropriate and timely compliance or enforcement action for all violations.

Violations shall be documented in writing, and the regulated entity shall be notified of all violations and whether enforcement action will be taken. Notification of the regulated entity shall be consistent with the agency's policies relative to providing notice of inspection results. The commissioner, assistant commissioners, and compliance branch chiefs possess the discretion to authorize compliance staff to deviate from the terms of this policy on a case-by-case basis.

6.4.1. Appropriateness:

The compliance manager shall seek to issue to a regulated entity the most appropriate enforcement action available in an effort to promote the expeditious return to compliance by that regulated entity.

Compliance managers shall identify an appropriate action for each violation consistent with standard operating procedures for program specific violations.

Class I Violations require immediate referral to the program assistant commissioner for consideration of initiation of the enforcement process regardless of the efforts by the responsible party or agency staff to achieve compliance. If the violator is responsible for a number of violations, which include a mixture of Class I, II and III violations, all violations will be referred with the Class I Violations.

Class II Violations require referral to the program assistant commissioner for consideration of initiation of the enforcement process, following the issuance of a violation letter, when the violation is not corrected within the timeframe required by the violation letter or if the violation occurs a second time.

Class III Violations may be referred to the program assistant commissioner for consideration of initiation of the enforcement process when the responsible party has been found to be repeatedly in violation of the same minor requirement, that is, responsible party has received written notification three times in the past five years for the same violation.

IDEM shall consider litigation to be anticipated with the regulated entity and shall comply with the agency's policy relative to maintaining information concerning facilities in litigation, no later than the date upon which a referral of a Compliance Inspection Report is made to the enforcement staff.

Consistent with [IC 13-14-5](#), compliance staff shall provide a verbal summary to the regulated entity, if the regulated entity is available, at the conclusion of an inspection.

Compliance staff shall provide a written inspection notification to the regulated entity of the on-site inspection or investigation detailing any specific matters discovered during the inspection or investigation that may constitute a violation of Indiana's Environmental Requirements.

Compliance staff shall provide in writing to the regulated entity, notice that a violation has been referred for initiation of the enforcement process at the time if the referral is deemed appropriate by the program assistant commissioner.

A. Class I Violations:

Compliance staff shall submit a referral to the program assistant commissioner for consideration, detailing any specific violations upon conclusion of a regulatory compliance review, on-site inspection or investigation, and determination of a violation.

B. Class II Violations:

Compliance programs shall issue Violation Letters for Class II Violations. Compliance staff and managers shall ensure that a Violation Letter is issued to a regulated entity upon the conclusion of an inspection or compliance review or investigation and determination of a violation.

Compliance staff and managers shall ensure that the regulated entity has achieved compliance with the provisions of the violation letter.

In the event that compliance with the provisions of a violation letter is not achieved, the compliance staff and manager shall ensure that the violations cited in the violation letter are referred to the program assistant commissioner for consideration.

If an enforcement follow-up inspection (EFI) is necessary to verify compliance with the violation letter, compliance staff and managers shall ensure that the EFI is conducted.

C. Class III Violations:

Compliance programs shall issue violation letters for Class III Violations. Compliance staff and managers shall ensure that a violation letter is issued to a regulated entity upon conclusion of an inspection or compliance review and determination of a violation.

In the event of repeated violations of the same minor requirement, that is, responsible party has received written notification three times in the past five years for the same violation, the compliance staff and manager shall ensure that the violations cited in the previous violation letters are referred to the program assistant commissioner.

If an enforcement follow-up inspection (EFI) is necessary to verify compliance with the violation letter, compliance staff and managers shall ensure that the EFI is conducted.

6.5. Other IDEM Actions:

A. The following violations shall be addressed as listed below:

1. All pollution spills and violations of an emergency nature shall be immediately reported to the IDEM's Spill Line at (888) 233-7745;
2. Direct or indirect threats, intimidation, criminal mischief, battery or other criminal or inappropriate behavior towards an employee during the course of addressing a complaint shall be immediately reported per the procedures set forth in IDEM's policy relative to dealing with threats or intimidations while conducting job duties;
3. Violations discovered by the Compliance and Technical Assistance Program shall be handled in accordance with appropriate policies relative to managing confidential information; and
4. State agency facilities:

In the event that other state agency facilities have violations that warrant referral to enforcement, the appropriate compliance program shall prepare a referral packet fully documenting in writing violations of Indiana's Environmental Requirements. The referral packet shall be routed to the assistant commissioner of the appropriate program area. The assistant commissioner shall notify senior staff at a senior staff meeting of the referral. Senior staff will determine which senior staff member shall contact their appropriate counterpart at the affected agency. The assistant commissioner shall hold discussions with counterparts at appropriate state agency concerning compliance problems to ensure that the appropriate state agency takes actions to return to compliance. The assistant commissioner shall, after discussion with appropriate state agency, determine whether to initiate enforcement processes against a state agency. In such a case the assistant commissioner shall forward the referral packet to the compliance and enforcement manager responsible for initiating enforcement actions.

6.6. Criminal Investigations:

Evidence or other information that indicates possible criminal activity shall be referred to the Office of Criminal Investigations consistent with the IDEM Office of Criminal Investigations standard operating procedure for use of investigative discretion.

6.7. Referral to Indiana Attorney General:

Evidence or other information that indicates clear and immediate danger to human health or the environment shall be referred to the Office of the Indiana Attorney General.

6.8. Referral to U.S. Environmental Protection Agency:

Only those cases known to be open and currently under investigation or consideration by U.S. EPA shall be referred after review by the Office of Legal Counsel assistant commissioner and respective program assistant commissioner.

7.0 REFERENCES

7.1. Self-Disclosure and Environmental Audit Policy, November 6, 2006

7.2. Threats, Intimidation and Criminal Behavior Related to the Workplace, July 23, 2007

7.3. [IC 13-30-3-3](#), Investigation of Violations; Administrative Proceedings and Orders; Notice of Violation; Offer of Opportunity to Enter into Agreed Order; Failure to Enter into Agreed Order

7.4. [IC 13-30-7](#), Minor Violations by Certain Businesses

7.5. [IC 13-30-3-10](#), Investigation of Violations; Administrative Proceedings and Orders; Orders; Determinations

7.6. [IC 13-14-5-3](#), Inspections; Written Summary Instead of Oral Report

8.0 SIGNATURES



Thomas W. Easterly, Commissioner
Indiana Department of Environmental Management

JUNE 23, 2009
Date

This policy is consistent with Agency requirements.



Quality Assurance Program, Planning and Assessment
Indiana Department of Environmental Management

JUNE 23, 2009
Date

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